THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JOHN M. LACRIOLA

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Appeal No. 96-2099
Application 08/128,976[1]

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ON BRIEF

_____

Before McCANDLISH, ***Senior Administrative Patent Judge*** and MEISTER and NASE, ***Administrative Patent Judges***.

MEISTER, ***Administrative Patent Judge***.

DECISION ON APPEAL

John M. Lacriola (the appellant) appeals from the final rejection of claim 26.[2] Claims 1-5, 7, 8, 10-12, 19-22, 24 and 27-33, the only other claims remaining in the application, stand

[1]Application for patent filed September 29, 1993.

[2] Claim 26 has been amended subsequent to final rejection by an amendment filed on March 9, 1995 (Paper No. 6).

allowed. We reverse.

The appellant's invention pertains to a method of automatically sorting sheets of material having indicia thereon. Claim 26 defines the invention in the following manner:

> 26. The method of automatically sorting sheets of material having indicia thereon comprising the steps of:
>
> Storing sheets of said material in a storage area;
>
> Removing sheets one at a time from said storage area;
>
> Depositing each said sheet after its removal on a conveyor belt having a surface divided into a plurality of pocket-like areas by members extending outwardly from said surface at a loading station disposed remote from said storage area;
>
> Reading each said sheet to ascertain information therefrom;
>
> Identifying from such information a predetermined address of a receiving bin into which such sheet is to be placed;
>
> Tracking the position of said sheet on said belt by counting each said outwardly extending member to determine when said sheet arrives at said address of said receiving bin; and
>
> Activating an air jet to propel the sheet from said belt into said receiving bin.

The references relied on by the examiner are:

Bush	2,717,086	Sep. 06, 1955
Anschutz	3,928,184	Dec. 23, 1975
Teegarden et al. (Teegarden)	5,207,331	May 04, 1993

Claim 26 stands rejected under 35 U.S.C. § 103 as being unpatentable over Teegarden in view of Anschutz and Bush. It is the examiner's position that:

> Teegarden discloses a method for automatically sorting flattened cartons having indicia thereon (note that the articles or materials to be separated fail to patentably distinguish the claimed method.[3] Even if one was to give weight to the claimed materials, one of ordinary skill would recognize that the sorter of Teegarden would be able to separate a wide range of materials, including sheets of material) comprising the steps of removing PNP-12 and/or PNP-2 sheets one at a time from a storage magazine 16, a conveyor belt 360, reading BCR-1 or BCR-2, identifying information on each sheet, a receiving bin 1R, tracking position of each sheet (column 14, lines 36-57). However, Teegarden does not have the belt divided into pockets by members extending outwardly form the belt and does not use an air blower to remove the sheets.
>
> Bush shows a conveyor belt 22 diving [sic] into pockets by members 24 extending outwardly from the conveyor belt (column 2, lines 31-34) for tracking the position of article a on the belt (column 3, line 39 to column 4, line 4).
>
> Anschutz shows an air blower 98 (Fig. 18).
>
> It would have been obvious to one skilled in the art to modify the belt of Teegarden to have extending

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[3] We must point out, however, that our reviewing court in ***In re Ochiai***, 71 F.3d 1565, 1571-72, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995) made it clear that the use of ***per se*** rules in determining the obviousness of process claims under § 103 is improper. Instead, the claimed invention as a whole must be analyzed and thus ***all*** claim limitations, including the particular articles being sorted, must be considered.

> outwardly members to form pockets as taught by Bush to
>
> reject [sic, eject] articles at a proper unloading position (Bush, column 1, lines 36-41) and to modify a trap door mechanism of Teegarden to have an air blower as taught by Anschutz to eliminate timing problems with other mechanical handling device[s] (Anschutz, column 12, lines 38-43). [Answer, page 3.]

We do not agree with the examiner's position. Even if we were to agree with the examiner that it would have been obvious to utilize Teegarden's method to sort sheets, we cannot agree with the examiner's (1) finding that the elements or "lines" 24 of Bush are outwardly extending or (2) position that it would have been obvious to substitute in Teegarden for his deflection gate (e.g., DG1L) to remove articles from the conveyor belt 362 an air nozzle as shown by Anschutz at 98.

With respect to the teachings of Bush, we find absolutely nothing therein which either teaches or suggests outwardly extending members on the conveyor belt 10 as the examiner asserts. Bush teaches that his conveyor belt 10 comprises a plurality of carrying sections 22

> which sections may be defined by lines 24 which may be painted on the belt or they may comprise strips of wood, metal or other material. [Column 2, lines 32-34.]

It does not follow that just because the "lines 24" are defined by strips of "wood, metal or other material" instead of paint, that these strips would extend outwardly from the surface as the

examiner appears to believe. Instead, the strips might be imbedded in the conveyor with the outermost surface thereof flush with the conveyor's outermost surface. Indeed, inasmuch as Bush's conveyor travels "continuously" (see column 2, line 12) and the various article pushers are actuated while the belt is traveling or moving (see, e.g., column 3 line 5; column 4, lines 1 and 2), it would appear that if the strips extended outwardly of the belt as the examiner contends, the risk of the strips and pushers interfering with one another would be great.

As to the examiner's proposed modification of Teegarden in view of the teachings of Anschutz, we find nothing in the combined teachings of these two references which would suggest the substitution in Teegarden for his deflection gate an air nozzle as shown by Anschutz. While Anschutz discloses an air nozzle 98 for deflecting articles in a sorting arrangement, the environment and articles being deflected are completely disparate to the collapsed carton sorting arrangement of Teegarden. In Teegarden the collapsed cartons being sorted are conveyed on edge in a vertical orientation along a continuously moving conveyor 362 and deflected to one side or the other at spaced locations by various gates (e.g., DG1L or DG1R) which are pivoted into the

path of a selected collapsed carton in order to divert it into a desired stacking channel (e.g., CH1L or CH1R). In Anschutz eggs, after being weighed, are intermittently conveyed or indexed by means of a chain conveyor 14 having pockets 46 (which hold the eggs) through six discharge areas. At the desired discharge area, an air nozzle 98 directs air across the top portion of a stationary egg in such a manner so as to lift the egg out of its pocket and transfer it across a short inclined crossover ramp 104 to a small rod-type conveyor 105 (see, generally, column 7; Figs. 15, 17 and 18). In our view, the examiner has impermissibly relied on the appellant's own teachings for motivation for singling out the air nozzle from the disparate teachings of Anschutz and incorporating it into the collapsed carton sorting arrangement of Teegarden.

We also observe that, as illustrated in Fig. 7 of Teegarden, the vertically oriented deflecting gates (such as DG1L and DG1R) in conjunction with vertically oriented guides (such as 631 and 631) ***also*** function to keep the collapsed cartons in a vertical orientation as they are being conveyed past the various sorting channels. On the other hand, if air nozzles as taught by Anschutz were substituted for the deflecting gates of Teegarden

as the examiner has proposed, the deflecting gates (such as DG1L and DG1R) would have to be removed in order to leave gaps or spaces through which a collapsed carton deflected by the air nozzles could pass. With such large gaps or spaces on both sides of the conveyor 362, it does not appear that a collapsed carton would be vertically conveyed past the successive sorting channels in the manner intended by Teegarden.

For the foregoing reasons we will not sustain the rejection of the appealed claim under 35 U.S.C. § 103 based on the combined teachings of Teegarden, Anschutz and Bush.

REVERSED

HARRISON E. McCANDLISH Senior Administrative Patent Judge	)	
JAMES M. MEISTER Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	)	

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